

## **REMARKS/ARGUMENTS**

The Applicant has carefully considered this application in connection with the Examiner's Action and respectfully requests reconsideration of this application in view of the foregoing amendment and the following remarks.

The Applicant originally submitted Claims 1-29 in the application. In previous responses, the Applicant added Claims 30-33 and amended Claims 1, 5, 11, 21-22, and 30-33. The Applicant filed a Request for Reconsideration (RCE) and amended Claims 1, 8, 11 and 15 and canceled Claims 21-33. In another previous response, the Applicant amended Claims 1, 7, 11 and 17 and added new Claims 34 -37 for examination. Presently, the Applicant submits an RCE, amends Claims 1, 11 and 34-37 without prejudice or disclaimer and adds new Claims 38-45. The amendments and new claims are supported, *e.g.*, at page 8, line 21, through page 9 line 7, and page 8, lines 7-15, of the Application as filed. Accordingly, Claims 1-20 and 34-45 are currently pending in the Application.

### **I. Formal Matters**

The Applicant's representative discussed the Application with the Examiner of record in a telephone call on July 27, 2009. The Examiner placed an Interview Summary in the record on August 5. The Applicant has no objections to the Examiner's summary of the discussion. The Applicant wishes to express his appreciation for the courtesies extended by the Examiner during this discussion.

### **II. Rejection of Claims 1-20 and 34-37 under 35 U.S.C. § 103**

The Office has rejected Claims 1-20 and 34-37 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,636,505 to Wang, *et al.* ("Wang") in view of U.S. Patent No.

6,091,713 to Lechleider, *et al.* ("Lechleider"). The applicant respectfully traverses the rejection in view of the amendments provided herein.

Specifically, the combination of Wang and Lechleider, as applied in the Office Action, fails to teach or fairly suggest at least one element of Claims 1 and 11 as amended. In particular, the combination as applied fails to teach or fairly suggest the feature recited in Claim 1, *e.g.*, "wherein said determining includes directing a modem coupled to said personal computer to access a network physical layer and report data elements associated with said access to said automation agent". Claim 11 includes similar elements not taught or fairly suggested by the combination as applied. Because the asserted combination fails to teach or fairly suggest each and every element of Claims 1 and 11, the claims are allowable over the combination. Claims 2-10, 12-20 and 34-37, depending from allowable base claims, are also allowable.

Accordingly, the combination of Wang and Lechleider as applied fails to support a *prima facie* case of obviousness under 35 U.S.C. § 103(a). The Applicant therefore respectfully requests that the Office withdraw the rejection and allow issuance of Claims 1-20 and 34-37.

### **III. New Claims 38-45**

The Applicant presents new Claims 38-45 for examination. The Applicant respectfully asserts that these claims each include at least one element not taught or fairly suggested by the references of record. Accordingly, the Applicant respectfully solicits a Notice of Allowance for Claims 38-45.

#### **IV. Conclusion**

In view of the foregoing amendment and remarks, the Applicant now sees all of the Claims currently pending in this application to be in condition for allowance and therefore earnestly solicits a Notice of Allowance for Claims 1-20, 34-45.

The Applicant requests the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

**HITT GAINES, PC**

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